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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re KATIE G. et al., Persons
Coming Under the Juvenile
Court Law.

B300531

(Los Angeles County
Super. Ct. No.19CCJP05067)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

MARIA G.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Sabrina A. Helton, Judge. Reversed and remanded with directions. Dismissed in part.

Annie Greenleaf, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Tracey F. Dodds, Principal Deputy County Counsel, for Plaintiff and Respondent.

Maria G. (Mother) appeals from the disposition order removing 15-year-old Katie G. and eight-year-old twins Alexander G. and James G. from her physical custody under Welfare and Institutions Code section 361, subdivision (c).¹ Mother also challenges the monitored visitation order made at the disposition hearing. We reverse the disposition order, including the requirement Mother's visits be monitored.²

FACTUAL AND PROCEDURAL BACKGROUND

A. Mother and Father's History of Domestic Violence

Mother and Gerardo G. (Father)³ have been married for 21 years and have four children together: adult son Gerardo, Jr.,

¹ Further undesignated statutory references are to the Welfare and Institutions Code.

² On February 27, 2020 jurisdiction was terminated as to James, who had died. On our own motion we take judicial notice of the February 27, 2020 minute order. (Evid. Code, § 452, subd. (d).) A dependency appeal “becomes moot when, through no fault of the respondent, the occurrence of an event renders it impossible for the appellate court to grant the appellant effective relief.” (In re J.P. (2017) 14 Cal.App.5th 616, 623; accord, In re David B. (2017) 12 Cal.App.5th 633, 644 [appeal moot where minor was over 18 at time of appeal].) We dismiss the appeal as to James.

³ Father is not a party to this appeal.

(Gerardo), and minors Katie, Alexander, and James. The family came to the attention of the Los Angeles County Department of Children and Family Services (Department) after an incident on June 27, 2019 in which Mother and Father were arrested for domestic violence against each other. Father reported Mother woke him up with blows to his face and then threatened him with a mop because she was upset with him about his text messages with another woman. Mother and Father argued about the texts, then Father saw Alexander and James in the living room looking scared. He put the twins back in their bedroom before locking himself in the bathroom and calling law enforcement. Father stated he did not push Mother or cause any injury to her. Mother stated Father pushed her after she confronted him about his text messages to another woman. Mother denied striking Father.

Mother described herself as a battered woman who remained with Father because of her marriage vows. Mother reported Father followed her “all the time,” was “very jealous,” and falsely accused her of having a boyfriend. Mother claimed Father had physically assaulted her about 16 or 17 years earlier. Further, when Mother was pregnant with Katie, Father threatened to punch her in the stomach after he got upset because she teased him in front of his friends. In 2014 Father was arrested after he hit and threw Mother during an argument. In April 2018 Father initiated divorce proceedings, but he forced Mother to be intimate with him in February, March, and June 2019.

Father confirmed he had verbal arguments with Mother but denied being violent. Father stated Mother humiliated and criticized him in front of family and friends, and she was “excessively jealous,” controlling, bad-tempered, and

“unpredictable.” On prior occasions, Mother punched and kicked him, destroyed his phones, glasses, and furniture, and crashed her car into his car. Father stated he was arrested in 2014 because Mother falsely claimed he pushed her. In 2019 Father decided to file for divorce after he found out Mother was having an affair. Their arguments escalated, and Mother began making threats against his life, their children’s lives, and her own life.⁴ On May 16, 2019 Father walked into a bedroom, and Mother threatened to hurt him and herself if he went through with the divorce. Mother grabbed Father’s neck and tried to hit his face with an iron. Katie was present and pleaded with Mother not to hurt Father. Mother practiced witchcraft, and Father became afraid Mother would poison him.

Gerardo, Katie, Alexander, and James denied witnessing the June 27, 2019 incident or any other physical altercations between Mother and Father.⁵ Katie had a good and open relationship with Mother and a fair relationship with Father. Katie resented Father for his prior physical discipline of her while she was in elementary school. Also, Mother told her of Mother’s problems with Father. Katie reported Mother and Father’s relationship was “complicated” because they would argue, apologize, then argue again the next day.

James was not afraid of Mother or Father and denied any abuse. Alexander disclosed Father used a belt physically to discipline him in the past, but he could not recall the last time

⁴ Father did not provide any specifics about the threats made or when they were made.

⁵ James told law enforcement officers he heard Mother and Father fight, but he did not witness it.

Father hit him. Alexander denied being fearful of Mother or Father. Gerardo confirmed his parents “had an up and down relationship in which they would argue and then make up and act as if everything was ok.” (Italics omitted.) When Gerardo was younger, each parent would complain to him about the other parent. Gerardo reported his parents exaggerated the harm caused by the other parent. On numerous occasions Father would rub up against Mother as he passed by, and Mother would immediately scream and accuse Father of pushing her. Although Mother practiced witchcraft, Gerardo had never seen or known Mother to use witchcraft to harm Father.

B. *The Petition and Detention*

On August 9, 2019 the Department filed a petition on behalf of Katie, Alexander, and James under section 300, subdivisions (a) (nonaccidental infliction of physical harm) and (b)(1) (failure to protect), alleging Mother and Father have a history of engaging in violent altercations in the children’s presence, including during the June 27, 2019 incident. The petition alleged Mother’s and Father’s violent conduct endangered the children’s physical health and safety and placed the children at risk of serious physical harm.⁶

At the August 12, 2019 detention hearing, the juvenile court granted Father a 20-day temporary restraining order to protect him from Mother and ordered her immediately to move

⁶ The petition also alleged Father abused alcohol and had a history of alcohol abuse, which rendered him incapable of providing regular care of the children, and Mother failed to protect the children from Father’s substance abuse.

out of the home.⁷ The court detained the children from Mother and Father and placed them with paternal uncle Tomas G. and his wife Maria, under the supervision of the Department. The court granted Mother and Father monitored visitation with the parents not allowed to visit together.

C. *The Jurisdiction and Disposition Report*

As of August 21, 2019 Mother was residing with maternal relatives in Orange County. Mother had limited living space, and the children would have to switch schools if they lived with her. Gerardo told the dependency investigator he was not concerned about his siblings' safety in Mother's and Father's care; however, he worried about his siblings' emotional state because of the parents' frequent arguments. Gerardo believed the best plan was for his siblings to be placed with Father because Father could offer stability in the family home. Gerardo stated he could not care for his siblings on his own because he worked the night shift. But Gerardo was willing to help Father with the children while Gerardo was not working.

Katie, Alexander, and James wanted to return home. Katie stated, "If I had to choose I would want to live with my mom but I don't mind living with my dad. If I live with my mom I know I will have to change schools and even though I don't want to do that, I will change schools if I have to." Alexander stated, "If I had to choose I don't know if I want to live with my mom or dad but I just want to go back home." James stated the same.

Mother and Father requested the children be returned to their care. Mother stated, "When the kids were initially detained

⁷ Juvenile Court Referee Robin Kesler presided over the detention hearing and issued the temporary restraining order.

from us, I refused to leave the house at my divorce attorney[]s request[] however I have since moved out and want the court to consider releasing them to me. I don't want my kids to be released to their father because since their detention my kids have disclosed to me that their father has used physical discipline and I fear for their safety in his care." Father stated, "I have no plans on getting back with my wife and will be requesting a permanent restraining order. I will never keep my kids from their mother but I feel like her visits with them need to be monitored based on the threats she has made against their life."

The August 30, 2019 jurisdiction and disposition report concluded Mother and Father had failed to take responsibility for the role each of them had played in the domestic violence. The report noted the emergency social worker "explained that in order for the [D]epartment to provide voluntary services, the parents could not reside in the same house[]hold, yet the parents have decided to remain in the same household while reporting that they are fearful for their safety." The report did not evaluate whether removal was necessary in light of Mother's move out of the family home. Nor did the report evaluate whether there were reasonable means to protect the children from harm without removing them from Mother and Father, especially given the changed living arrangements. The Department concluded the children needed to be removed from Mother and Father because "the parents are in the middle of a rocky divorce and long term the [D]epartment cannot ensure that the parents will [not] continue to engage in incidents of domestic violence and continue to endanger the [children's] emotional and physical well-being."

At the time of the report Mother had monitored visitation with the children two days a week. The caregiver reported the children appeared happy during their separate visits with Mother and Father, and both parents were appropriate with the children. On two occasions Mother attempted to speak with Katie in secret, but the caregiver immediately reminded Mother of the rules. The Department recommended monitored visitation for Mother and Father with the Department having discretion to liberalize visitation. The report did not explain the basis for the Department's recommendation Mother and Father have only monitored visitation.

D. *The Jurisdiction and Disposition Hearing*

The Department called Mother and Father as witnesses at the August 30, 2019 jurisdiction and disposition hearing. Father testified the police came to his house in 2019 after Mother "woke [him] with up with a series of blows in [his] face and to [his] body." Father did not strike Mother back or defend himself. Father tried to calm Mother, but she ran into the kitchen, grabbed a mop, and threatened him with it. Mother had attacked him and damaged his personal property more than six times in 2019. At some unspecified time Mother tried to stab Father with a kitchen knife. At another unspecified time Mother "told [Father] she was going to commit suicide or even harm the children or harm [Father]." Father denied he was the perpetrator of domestic violence or ever forced Mother to be intimate with him. He admitted he was arrested in 2014 as the perpetrator of domestic violence but denied he struck Mother at any time during the incident.

Mother testified she was a victim of Father's domestic violence during their 21 years of marriage. In the 2014 incident,

Father grabbed her by the neck, slapped her, pulled off her earring, and pushed her onto the bed. Mother did not hit him at any time during the incident. She also denied hitting Father in June 2019. Father pushed her, and when the mop fell over, she stepped on it to prevent Father from using it to hit her. Mother denied threatening to kill herself or Father.

The juvenile court⁸ found “both parents to be credible.” In light of the parents’ conflicting stories, the court found this was “a situation of probably mutual domestic violence.” The court sustained the allegations under section 300, subdivision (b)(1), that Mother’s and Father’s domestic violence placed the children at risk of harm and dismissed the remaining allegations.

As to removal of the children, minors’ counsel acknowledged the children “all wish to return to this home, whether that is with their mother in the home or their father in the home.” But minors’ counsel argued that “given the unresolved issues and the patterns that the parents have demonstrated in using each other, separating, coming back for a period of 21 years, and inappropriate behaviors, . . . I think that that is not a safe environment for the children to be in at the present time.” Father asked for release of the children to his care, contending the temporary restraining order was “sufficient to prevent the parents from coming together, such that the children can be safely released to [Father] at the home.” Mother requested release of the children to her care, contending “protective measures could be put in place in order to ensure the safety of the children.” In the alternative, Mother requested unmonitored visitation, arguing Mother did not use physical

⁸ Judge Sabrina A. Helton.

discipline on the children and the children wanted to spend time with her. Mother presented evidence she had attended two individual counseling sessions, three parenting classes, and three domestic violence awareness classes.

The juvenile court declared the children dependents of the court under section 300, subdivision (b)(1). The court found “by clear and convincing evidence that remaining in the home of the parents would pose a substantial detriment to the children’s physical health, safety, and/or physical and emotional wellbeing.” Further, the court found, “There are no reasonable means by which the children’s health and well[-]being can be protected without removing the children from the parents’ physical custody.” The court explained, “I would like to see one parent say . . . maybe the other parent could take the child[ren] so my kids don’t have to remain out of the home. [¶] The parents have not learned this yet.” The court observed the parents had a “really long history of domestic violence” that was “harmful to the children, no matter who is the perpetrator, whether it’s one or both, it’s what the kids actually see or know.” The court stated to Mother and Father, “I think when you take these courses, you’re going to learn about the very terrible [e]ffect that domestic violence has on children, sometimes for life, you know. [¶] I think this is your opportunity to try to get a handle on that. [¶] It appears you two are planning to divorce. [¶] But know that . . . you’re also going to be co-parents no matter what. . . . [U]ntil you guys can get honest on this relationship and somehow turn it around, I am very worried for your children, the long term impact on your children, that it’s going to have—so I’m not ready to release [the children] to the home of the parent.”

The court ordered Mother and Father to participate in a domestic violence program for perpetrators, parenting classes, and individual counseling to address domestic violence. The court granted Mother and Father monitored visits for three hours each week with the Department having discretion to liberalize visitation. The court ordered Mother and Father not to visit together. The court denied Father's request for a three-year restraining order but ordered Mother and Father "to stay at least 100 yards away from one another."

Mother timely appealed.

DISCUSSION

A. *Substantial Evidence Does Not Support the Removal Order*

"At the dispositional hearing, a dependent child may not be taken from the physical custody of the parent under section 361 unless the court finds there is clear and convincing evidence there is or would be a substantial danger to the child's physical health, safety, protection, or physical or emotional well-being if returned home, and that there are no reasonable means to protect the child's physical health without removing the child." (*In re D.P.* (2020) 44 Cal.App.5th 1058, 1065; accord, *In re G.C.* (2020) 48 Cal.App.5th 257, 265; see § 361, subd. (c)(1).) The juvenile court must determine "whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home" and "shall state the facts on which the decision to remove the minor is based." (§ 361, subd. (e).)

"In determining whether a child may be safely maintained in the parent's physical custody, the juvenile court may consider the parent's past conduct and current circumstances and the parent's response to the conditions that gave rise to juvenile court

intervention.” (*In re D.B.* (2018) 26 Cal.App.5th 320, 332; accord, *In re Alexander C.* (2017) 18 Cal.App.5th 438, 451.) “A removal order is proper if based on proof of parental inability to provide proper care for the child and proof of potential detriment to the child if he or she remains with the parent. [Citation.] “The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child.”” (*Alexander C.*, at p. 451; accord, *D.B.*, at p. 328.) We review the entire record to determine whether the removal order is supported by substantial evidence. (*D.B.*, at pp. 238-239; *Alexander C.*, at p. 451.)

Here, the juvenile court found “by clear and convincing evidence remaining in the home of the parents would pose a substantial detriment to the children’s physical health, safety, and/or physical and emotional wellbeing,” and “[t]here were no reasonable means by which the children’s health and well[being] can be protected without removing the children from the parents’ physical custody.” But the court did not state facts to support removal as required under section 361, subdivision (e) and California Rules of Court, rule 5.695(c)(1) and (d). (*In re D.P.*, *supra*, 44 Cal.App.5th at p. 1067 [“the juvenile court erred when it removed [the child] from mother’s custody without stating the facts supporting removal”]; *In re Ashly F.* (2014) 225 Cal.App.4th 803, 810 [juvenile court failed to state facts supporting its conclusion reasonable efforts were made to prevent and eliminate the need for the children’s removal].)

The juvenile court faulted Mother and Father for not allowing the other parent to remain in the home with the children, but this finding does not address whether removal was necessary to protect the children. The court similarly expressed

its concern Mother and Father had not accepted responsibility for their domestic violence, but it failed to determine whether there were reasonable means to protect the children without removing them from the parents' custody (§361, subd. (c)(1)), and whether reasonable efforts were made to prevent or to eliminate the need for removal of the children from their home (§361, subd. (e)).

Nor did the court consider “[t]he option of removing an offending parent . . . from the home.” (§361, subd. (c)(1)(A).) By the time of the jurisdiction and disposition hearing, Father had filed for divorce, and Mother had moved out of the family home. Yet the court failed to consider whether the children could remain safely either with Father in the family home or with Mother in Orange County. (See *In re A.R.* (2015) 235 Cal.App.4th 1102, 1118 [insufficient evidence supported child’s removal where “father had already removed himself from the home” and “[t]here was no evidence that father intended to move back into the home”]; *In re Ashly F.*, *supra*, 225 Cal.App.4th at p. 810 [juvenile court erred by failing to consider the option of removing offending parent where evidence showed mother had “removed herself from the family home following the detention hearing”]; see also *In re D.P.*, *supra*, 44 Cal.App.5th at pp. 1068-1069 [concluding it was reasonably probable juvenile court would have found mother’s removal from the home was a reasonable means to protect child from substantial harm if he was returned home, where child lived with father in family home and mother had moved out to comply with restraining order].)

By the time of the disposition hearing, Mother and Father were participating in domestic violence awareness classes, parenting classes, and individual counseling. The children denied being afraid of Mother and Father and wanted to live with

either parent as long as they could return home. Katie was prepared to change schools if necessary to live with Mother. Notwithstanding the children's desire to live with either parent, the Department did not assess whether it would be a reasonable alternative to place the children with Mother in Orange County or Father in the family home. Instead, the Department's recommendation for removal in the jurisdiction and disposition report was based on the emergency social worker's recommendation for removal given the parents' refusal to move out of the family home. Moreover, the report failed to address whether reasonable efforts had been made to prevent or eliminate removal as required under California Rules of Court, rule 5.690(a)(1)(B)(i). (*In re Ashly F.*, *supra*, 225 Cal.App.4th at p. 810 [Cal. Rules of Court, rule 5.690(a)(1)(B)(i) and § 361, subd. (e) ensure "the agency's declarations that there were 'no reasonable means' other than removal 'by which the [children's] physical or emotional health may be protected' and that 'reasonable efforts were made to prevent or to eliminate the need for removal'" do not "become merely a hollow formula"].) On these facts substantial evidence does not support the juvenile court's findings removal of the children was necessary to protect the safety and wellbeing of the children and there were no reasonable means to protect the children without removing them from Mother and Father. (*In re D.B.*, *supra*, 26 Cal.App.5th at pp. 238-239; *In re Alexander C.*, *supra*, 18 Cal.App.5th at p. 451.)

B. *The Monitored Visitation Order Must Also Be Reversed*

"A disposition order granting reunification services must provide for visitation between a child and parent 'as frequent as possible, consistent with the well-being of the child.' (§ 362.1, subd. (a)(1)(A).) In addition, section 362.1 mandates '[n]o

visitation order shall jeopardize the safety of the child.’ (§ 362.1, subd. (a)(1)(B).)” (*In re T.M.* (2016) 4 Cal.App.5th 1214, 1218; accord, *In re Matthew C.* (2017) 9 Cal.App.5th 1090, 1100-1101.) “The power to regulate visits between dependent children and their parents rests with the juvenile court and its visitation orders will not be disturbed on appeal absent an abuse of discretion.” (*In re D.P.*, *supra*, 44 Cal.App.5th at p. 1070; accord, *In re R.R.* (2010) 187 Cal.App.4th 1264, 1284.)

For the same reasons we reverse the order removing the children from Mother’s and Father’s custody, we also reverse the juvenile court’s order requiring Mother’s visits be monitored. Although the court found credible the accounts of Mother and Father that each had perpetrated domestic violence against the other, there was no evidence Mother had ever emotionally or physically abused the children. The children wanted to return to the home of either parent. Further, although the jurisdiction and disposition report expressed a concern domestic violence would continue with Mother and Father residing together in the family home, neither the Department nor the court evaluated whether the children would be at risk of harm with Mother living in Orange County subject to a mutual stay away order. There was also no evidence Mother or Father had violated the temporary restraining order previously in place. On this limited record, the court abused its discretion in requiring Mother’s visitation be monitored.

DISPOSITION

The disposition order is reversed. On remand, the juvenile court should order the Department to evaluate whether there are reasonable means of protecting the children given the parents’

current living arrangements and the reasonable efforts that have been made to prevent or eliminate removal. The juvenile court must hold a new disposition hearing as promptly as feasible to determine whether reasonable efforts have been made to prevent or eliminate the need for removal of the children from their home given the parents' current circumstances (§ 361, subd. (e)), and if the children are removed from Mother, whether her visitation should be monitored. The children are to remain in their current placement with the monitored visitation order in effect pending the new disposition hearing or further order of the juvenile court.

FEUER, J.

We concur:

PERLUSS, P. J.

SEGAL, J.